



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUSIA**  
**Miscellaneous Application 64 of 2010**

JONATHAN BWIRE.....APPLICANT

-VERSUS-

ROSEMARY AUMA ABANGI.....1<sup>ST</sup> RESPONDENT

**THE CHAIRMAN BUDALANGI**

LAND DISPUTES TRIBUNAL.....2<sup>ND</sup> RESPONDENT

THE SRM COURT BUSIA E.H. KEAGO.....3<sup>RD</sup> RESPONDENT

**R U L I N G**

The application is for leave to file a Notice of Motion for Orders of Certiorari calling to this court a Land Dispute's Tribunal decision adopted by the lower court for quashing. The application is properly accompanied with a statutory statement and a verifying affidavit carrying various annexures. The Notice required to be served upon the Registrar was properly served. In the above circumstances there is no good reason for this court to prevent or hinder a citizen's access to the seat of justice. The court hereby therefore grants the leave sought.

The applicant in addition seeks the granted leave to be made to operate as stay of execution of the Tribunal's decision or order. The ground he gives is that relying on the Tribunal's decision the Interested Party is presently embarking on

sub-division of the parcel of land the subject of this suit. He must be stopped until the intended suit is determined, he argued.

I have considered the argument. I agree. It will be futile to proceed with the suit if at the end of it, the land will have disappeared. I will accordingly allow the leave to be a stay.

**ORDERS:**

1. The leave sought is granted and Notice of Motion shall be filed within 14 days of today.
2. Applicant to serve application within 21 days.
3. Respondents and/or Interested Parties so served to file and serve their replying affidavits within 21 days of such service.
4. Leave granted to operate as stay of execution until further orders.
5. Mention for further directions on 27.7.2010.
6. Costs in the main application.

Dated and delivered at Busia this 22<sup>nd</sup> day of June 2010.

D.A. ONYANCHA

**J U D G E**